SUPREME
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BRIEF IN OPPOSITION TO CERTIORARI

No. 627

IN THE

Supreme Court of the United States

October Term, 1958

HANNAHVILLE INDIAN COMMUNITY, ET AL.,
Petitioners

v.

THE PRAIRIE BAND OF POTAWATOMI INDIANS, ET AL.,
THE CITIZEN BAND OF POTAWATOMI INDIANS, ET AL.,
Respondents

and

THE UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Claims. Brief of Respondents in Opposition

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O. R. McGUIRE
Southern Building
Washington 5, D. C.

Attorney for Prairie Band of Potawatomi Indians

HOWARD D. MOSES
231 South LaSalle Street
Chicago, Illinois

Attorney for Citizen Band of Potawatomi Indians

Of Counsel:

ROBERT STONE JOHNSON
Columbian Building
Topeka, Kansas

IVY LEE BUCHANAN
Southern Building
Washington 5, D. C.

LOUIS L. ROCHMES
711 14th Street, N. W.
Washington 5, D. C.

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

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v.

THE PRAIRIE BAND OF POTAWATOMI INDIANS, ET AL.,
THE CITIZEN BAND OF POTAWATOMI INDIANS, ET AL.,
Respondents

and

THE UNITED STATES OF AMERICA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

I.

OPINIONS BELOW

The opinion of the Court below is dated July 16, 1958, and reported as *Prairie Band of Potawatomi Indians et al.*, v. *United States, et al.*, in 165 Fed. Supp. 139 to 154, inclusive. At this writing this opinion has not been printed in a volume common to the reports of the Court of Claims. This opinion was written by Mr. Justice Reed (retired from this Court) but the usual statement as to the writer of the opinion was omitted from the copy of the opinion printed by the petitioners in their appendix. (1-A) The Court of Claims opinion was unanimous.

The Indian Claims Commission wrote both Findings of Fact and an opinion, dated September 19, 1956, (4 Indian Claims Commission, 515, 539). As this Court may be aware, the findings of fact and opinions of this Commission are mimeographed and not printed. A copy of the Commission's *opinion* has been printed in the appendix of petitioner's brief (A-25-47A). The Findings of Fact by the Commission in this matter have not been printed by the petitioner. Counsel for respondents deem such findings of fact most material and a part of the opinion of the Commission. They have printed the said Findings of Fact in the appendix to this brief.

II.

JURISDICTION

The Indian Claims Commission entered Findings of Fact and an opinion dated September 19, 1956 (4 Indian Claims Commission 515, 539), sustaining the motion of the respondents to dismiss the intervening petition of the petitioners because of the failure of the petitioners to establish that they had any interest in the principal case, in which, on the same day, the Commission filed Findings of Fact and an opinion, (4 Indian Claims Commission). Petitioners filed a motion for rehearing of the allowance of the motion dismissing their intervening petition. Upon the denial of said motion, petitioners filed an appeal to the United States Court of Claims under Section 20 (b) of the Indian Claims Commission Act of 1946. The Court of Claims decided the case adversely to the petitioners in this opinion entered July 16, 1958, which has been reported as above stated. Petitioners filed a motion for rehearing shortly before the lower Court adjourned for the summer months. The motion was denied on October 8, 1958, after the judges of the Court returned. The filing of this petition for certiorari followed.

In a proper Indian case, this Court certainly has discretionary jurisdiction to grant or deny certiorari under 28 U. S. C. 1255, and Section 20(c) of the Act of August 13, 1946, 60 Stat. 1049.

Respondents contend that this case is not a proper case in which to grant certiorari.

III.

QUESTIONS PRESENTED

The Indian Claims Commission made Findings of Fact, sustained by the Court of Claims, to the effect that the petitioners were not as a matter of historic fact, tribal custom or Federal law, members of, or occupants of the lands of the Potawatomi Nation which in 1846 made a treaty ceding such lands to the United States (9 Stat. 853). The question is whether subsequent Congressional legislation appropriating funds for the petitioners' benefit must be construed as making them a part of the Potawatomi Nation, and entitled to share with the acknowledged bands of that Nation the recovery of compensation for the lands ceded in 1846.

No question is involved as to the power of the Court below, or the Indian Claims Commission to "modify" (Pet. p. 5) an Act of Congress. The appropriations made from general funds in the Treasury (not from tribal funds) were, so far as appears, expended by the Secretary of the Interior, as intended, for the petitioners, or for their benefit.

IV.

STATUTES INVOLVED

The statute primarily involved is the Act of August 13, 1946, 60 Stat. 1049, generally known as the Indian Claims Commission Act, particularly Section 20 thereof.

Also, there are involved certain extracts from statutes enacted by the Congress from time to time during the period of 1906 to 1928 which are printed in the appendix to this brief. (App. 12-17)

V.

STATEMENT

The Potawatomi Indians all originally lived east of the Mississippi River, organized in different autonomous groups and occupying various tracts of land in what we now know as the States of Ohio, Indiana, Michigan, Illinois and Wisconsin. (165 Fed. Supp., pg 143). Westward removal of the majority of the Potawatomi Indians was effected in large measure by two treaties. By a treaty made in 1833 a tract in South Western Iowa was granted to Potawatomi Indians and a few Chippewa and Ottawa Indians, referred to as the "United Nation of Chippewa, Ottawa and Potawatomie Indians" (7 Stat. 439). By a second treaty made in 1837 a tract of land in eastern Kansas, in the Osage River area, was granted to "The Pottawatomies of Indiana". Both tracts were reconveyed to the United States by a treaty made in 1846, which treaty also consolidated the Indians on both tracts, formerly autonomous Potawatomi groups or bands of said Indians into the "Potowatomi Nation" of Indians. None of the petitioners' ancestors were included among the groups consolidated. This 1846 treaty also provided that the consolidated bands, forming the Potowatomie Nation were to be removed to the Kaw River Valley in Kansas and they were so removed.

The Potowatomie Nation of Indians later became divided into the Citizen Band and Prairie Band of Potawatomie Indians. The Prairie Band was allowed to retain a small reservation of Kaw River land to be held in common. The Citizen Band received its share of the Kaw River land in severalty. The balance of the Kaw River Land was sold to one of the western railroad companies

and the proceeds were divided only among the members of the said Prairie and Citizen bands of Indians, respondents here.

Petitioners here are descendants of individual Indians who remained east of the Mississippi, some with Government consent and some without such consent. Some had formerly been connected with bands consolidated under the 1846 treaty, but none of them lived on the western lands.

Respondent brought this suit under the Act of August 13, 1946 to recover adequate compensation for the lands ceded by the Potawatomi Nation of Indians under the treaty of 1846. Petitioners intervened, with leave of the Indian Claims Commission. Following a trial on the merits, the Commission made Findings of Fact and wrote an able opinion. The Commission then dismissed the intervening petition. A motion was filed by the petitioners for a rehearing and the Commission denied the motion.

The petitioners then appealed to the United States Court of Claims and that court has affirmed the findings of fact and opinion of the Indian Claims Commission. Petitioners filed a motion for rehearing and the motion was denied.

The opinions of the Court of Claims and of the Indian Claims Commission are both such that counsel for respondents are unable to improve on their statements of the case. The opinion written by Mr. Justice Reed, particularly, stated the contentions of the petitioners and very clearly and ably answered the same.

VI.

ARGUMENT

1.

There is no conflict of decision

The petitioners have offered no citations in support of their assertion that "there is a conflict of decision which this Court should settle" (Pet. p. 32). Actually, the decision of the Court below makes it plain that both that Court and the Commission are in accord with all the decisions of this Court, going back to the *Cherokee Trust Funds* case, 117 U. S. 308. Moreover, as pointed out by the court below, a similar claim to that of the petitioners was long ago rejected by the Court of Claims in *Potawatomie Indians* v. *United States*, 27 C. Cls. 403, aff'd sub. nom. *Pam-to-pee* v. *United States*, 148 U. S. 691.

The principle of these decisions has been since consistently followed. This principle was stated and applied by the Court and Commission below (165 Fed. Supp. 139, 147; see Pet. p. 13-A):

> "Since it was only members of the tribe who were entitled to the use and benefit of the tribal property, land or annuities, membership in the tribe is the touchstone to the right of individuals or groups to participate."

citing *Halbert* v. *United States*, 283 U. S. 753; *Oakes* v. *United States*, 172 Fed. 307.

On this issue we know of no conflict of decisions between the opinions and judgments of either the Commission or the Court below, and the opinions and judgments of this Court.

2.

The opinion and judgment of the Court below are clearly correct.

The petitioners have cited no cases which hold, or even by implication suggest, that the Court below may be in

error. The petitioners' main argument is that the Congress of the United States has recognized the present day so-called Wisconsin Band of Indians as entitled to share in all the assets, including recoveries of the Potawatomi Nation for western lands under the Indian Claims Commission Act. Both the Court below and the Indian Claims Commission carefully examined this contention and found it to be entirely without merit.

The appropriations made by the several statutes between 1906 and 1928 relied upon do not in terms, or by implication, determine that the Wisconsin Potawatomi Indians have, or should be given, any recognized status as members of the Potawatomi Nation which moved west of the Mississippi River, or to share with the members of such Nation or their successors in recoveries under the Indian Claims Commission Act. The Court below determined that the evidence supported:

> "* * * the Commission's final conclusion that the appellants [petitioners here] had dissolved 'their connections and their rights to share' in the proceeds of the Western lands before the treaty of Council Bluffs and Osage River." (165 Fed. Supp. 153)

Petitioners quote from a report of the Secretary of the Interior which they assert shows a determination by him of their rights (Pet. p. 19). The quotations omit significant phrases! The Secretary was discussing, and by direction of Congress reporting, on what would have been "due" the so-called Wisconsin Band "assuming that all members of the Tribe should share equally" (Pet. p. 90-A). With respect to lands west of the Mississippi, the report discusses what the alleged Wisconsin Potawatomi "would have been entitled to . . . had they removed there" (Pet. p. 94-A) or "had they emigrated with their brethren" (ibid).

The Court below specifically agreed with the Commission that as to the making of these appropriations to be

used by the Secretary of the Interior, as above stated, for the benefit of the petitioners:

> "We conclude that the Indian Claims Commission correctly held that these appropriations were not and were not intended to be a recognition of a right in the non-emigrant Wisconsin Indians to share in the proceeds of the Western property." (165 Fed. Supp. 146)

It has been stated in many cases in this Court, too numerous to mention, that this Court does not sit as a court for the correction of error.

The scope of judicial review by this Court of findings of fact and opinions of the United States Court of Claims in Indian cases is stated in Section 20(c) of the Indian Claims Commission Act, approved August 13, 1946, as follows:

> "*Determination of questions of law by the Court of Claims under this section shall be subject to review by the Supreme Court of the United States* in the manner prescribed by Section 3 of the act of February 13, 1925 (43 Stat. 939; 28 USC sec. 288[1] as amended." (Italics supplied)

There is thus no provision for the review of the facts by the Supreme Court of the United States in Indian cases arising under the Indian Claims Commission Act of 1946. A limited review of the facts in Indian cases is vested in the United States Court of Claims, in pertinent part, by Section 20(b) of the Indian Claims Commission Act of August 13, 1946, as follows:

> "At any time within three months from the date of filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims,

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[1] By revisions of the Federal Code, this Section 288 of Section 28 is now Section 1255 U. S. Code

which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. On said appeal the Court shall determine whether the findings of fact of the Commission are supported by substantial evidence, in which event, they shall be conclusive, and also whether the conclusions of law, including any conclusions respecting 'fair and honorable dealings', where applicable, stated by the Commission as a basis for its final determination, are valid and supported by the Commission's findings of fact. In making the foregoing determinations, the Court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error. The Court may at any time remand the cause to the Commission for such further proceedings as it may direct, not inconsistent with the foregoing provisions of this section."

Mr. Justice Reed, in this case, was quite careful to point out in his opinion dated July 16, 1958, reported in 165 Fed. Supp. 139, at page 153, that:

"Our review of this record leads to the conclusion reached by the Commission. We think the Commission's findings of fact, material to the conclusions reached by us as to the claims of appellant, are supported by substantial evidence in the record as a whole in accordance with this Court's interpretation of the Indian Claims Commission Act in *Osage Nation of Indians* v. *United States*, 119 Ct. Cls., 592, 602 and support the Commission's final conclusion that the appellants had dissolved 'their connections and their rights to share' in the proceeds of the Western Lands before the Treaty of Council Bluffs and Osage River."

"The judgment of the Indian Claims Commission dismissing the petition for intervention is affirmed."

There is not involved here any important question of Federal Law. The assertions of the petitioners to the contrary have been made notwithstanding the unanimous

Findings of Fact and the unanimous opinion of the three man Indian Claims Commission, which are both dated September 19, 1956. Also, the said Commission unanimously denied petitioners' motion for a rehearing in the case.

The assertions of petitioners are also in the face of the unanimous opinion and judgment of the Court of Claims, a retired member of this Court writing the opinion unanimously concurred in by the sitting judges of the Court below. A motion for a further hearing by the said court was denied on October 8, 1958.

Thus three members of the Indian Claims Commission and Mr. Justice Reed and three sitting members of the Court of Claims, or a total of seven members of the Commission and the Court below, have decided the issues in the case which petitioners now assert were erroneously decided!

Counsel for the respondents are satisfied that the learned Findings of Fact prepared by the Indian Claims Commission and its opinion as well as the learned opinion of the Court below constitute a complete answer to the petition for certiorari.

Instead of an important question of Federal law being involved, all that is involved is whether the petitioners are entitled under uncontested facts to a share of any recovery the respondents may collect for the cession by the Potawatomi Nation of Indians in 1846 of their land in southwestern Iowa and in eastern Kansas in the Osage River area! The Commission and the Court below have answered in the negative and we believe the Court below to be entirely correct.

Conclusion

Respondents believe that the opinion and judgment of the Court of Claims are entirely correct in affirming the

Findings of Fact and Opinion of the Indian Claims Commission. The petition for certiorari should be denied for the reason that it can not be properly granted in view of the terms of Section 20 (c) of the Indian Claims Commission Act of 1946 and the correctness of the opinion and judgment of the Court below.

Respectfully submitted,

O. R. McGuire
Attorney for Prairie Band of Potawatomi Indians

Howard D. Moses
Attorney for the Citizen Band of Potawatomi Indians

Of Counsel:

Louis L. Rochmes
711 14th Street
Washington, D. C.

Ivy Lee Buchanan
Southern Building
Washington 5, D. C.

Robert Stone Johnson
Columbian Building
Topeka, Kansas

APPENDIX I

Act of June 21, 1906, 34 Stat. 380:

> "That the Secretary of the Interior be, and he is hereby, directed to cause an investigation to be made of the claims of the Pottawatomie Indians of Wisconsin, as set forth in their memorial to Congress printed in Senate Document Numbered One Hundred and Eighty-five in Fifty-Seventh Congress, Second Session, and to be reported thereon to Congress at the beginning of the last session thereof, showing on the best information now obtainable what number of said Indians continued to reside in the State of Wisconsin after the Treaty of September 26, 1833, their proportionate share of the annuities, trust funds, and other moneys paid to or expended for the tribe to which they belong, in which the claimant Indians have not shared, the amount of such moneys retained in the Treasury of the United States to the credit of the claimant Indians as directed by the provision of the Act of Congress approved June 25, 1864; if none have been so retained the amount that should have been annually so retained under said law, showing also what disposition has been made of the annuities, trust funds, and other moneys of said tribe, with the amounts and the status of any now remaining to their credit in the Treasury or otherwise. He will also cause an enrollment to be made of said Pottawatomie Indians."

Act of June 30, 1913, 38 Stat. 102:

> "For the portion of allotments for the individual members of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan $150,000 said sum to be reimbursed to the United States out of appropriation, when made, of $447,339, the said sum last named being the proportionate share of the said Indians in annuities and moneys of the Potawatomie Tribe, in which they have not shared, as set forth in House Document Eight Hundred and Thirty, Sixtieth Congress, First Session, and the Secretary of the In-

terior is hereby authorized to expend the said sum of $150,000 in the purchase of land within the States of Wisconsin and Michigan, the title of such land to be taken in trust by the Government for the use and benefit of said Indians, said land to be situated in organized school districts and to be purchased in bodies of not more than one section, which said bodies shall not adjoin each other: *Provided*, that the lands so purchased, except such part thereof as may be necessary for administrative purposes, shall be divided equitably among the Indians entitled thereto, and patents therefor shall be issued in accordance with the general allotment laws of the United States: *Provided further*, That The Secretary of the Interior may, in his discretion, withhold allotments from any Indian or Indians belonging to this Band who, owing to advanced age or other infirmities, are deemed by him incapable of making beneficial use thereof, and in lieu of similar allotments to Indians falling within this class tentative allotments of land may be made to such Indians for occupancy and use during the remainder of their natural lifetime."

Act of August 1, 1914 (38 Stat. 607)

"The money appropriated in section twenty-four of the Indian Appropriation Act of June thirtieth, nineteen hundred and thirteen (Public Numbered four), for the purchase of allotments for the individual members of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan, is hereby reappropriated and made available for the purpose for which appropriated and shall remain available until expended."

Act of May 18, 1916 (39 Stat. 156-157)

"For the support and civilization of those portions of the Wisconsin Band of Pottawatomie Indians residing in the States of Wisconsin and Michigan, and to aid said Indians in establishing homes on the lands purchased for them under the provisions of the Act of Congress approved June thirteenth, nineteen hun-

dred and thirteen, $100,000, or so much thereof as may be necessary, said sum to be reimbursed to the United States out of the appropriation, when made, of the principal due as the proprotionate share of said Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared, as set forth in House Document Numbered Eight Hundred and thirty (Sixtieth Congress, first session), and the Secretary of the Interior is hereby authorized to expend the said sum of $100,000 in the clearing of land and the purchase of houses, building material, seed, animals, machinery, tools, implements, and other equipment and supplies necessary to enable said Indians to become self-supporting: *Provided*, That in order to train said Indians in the use and handling of money, not exceeding $25,000 of the above appropriation may be paid to them per capita, or be deposited to their credit subject to exppenditure in such manner and under such rules and regulations as the Secretary of the Interior may prescribe."

Act of March 2, 1917 (38 Stat. 991)

"For the support and civilization of these portions of the Wisconsin Band of Pottawatomie Indians residing in the States of Wisconsin and Michigan, and to aid said Indians in establishing homes on the lands purchased for them under the provisions of the Act of Congress approved June thirtieth, nineteen hundred and thirteen, $100,000, or so much thereof as may be necessary, said sum to be reimbursed to the United States out of the appropriation, when made, of the principal due as the proportionate share of said Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared, as set forth in House Document Numbered Eight Hundred and thirty (Sixtieth Congress, first session), and the Secretary of the Interior is hereby authorized to expend the said sum of $100,000 in the clearing of land and the purchase of homes, building material, seed, animals, machinery, tools, implements, and other equipment and supplies necessary to enable said Indians to become self-supporting: *Provided*, That in order to train said Indians in the use and handling

of money, not exceeding $25,000 of the above appropriation may be paid to them per capita, or be deposited to their credit subject to expenditure in such manner and under such rules and regulations as the Secretary of the Interior may prescribe."

Act of May 25, 1918 (30 Stat. 589)

"For the support and civilization of those portions of the Wisconsin Band of Pottawatomie Indians residing in the States of Wisconsin and Michigan, and to aid said Indians in establishing homes on the land purchased for them under the provisions of the Act of Congress approved June thirtieth, nineteen hundred and thirteen, $75,000, or so much thereof as may be necessary, said sum to be reimbursed to the United States out of the appropriation, when made, of the principal due as the proportionate share of said Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared as set forth in House Document Numbered Eight hundred and thirty (Sixtieth Congress, first session), and the Secretary of the Interior is hereby authorized to expend the said sum of $$75,000, in the clearing of land and the purchase of houses, building material, seed, animals, machinery, tools, implements, and other equipment and supplies necessary to enable said Indians to become self-supporting: *Provided*, That from the sum herein appropriated for said Pottawatomie Indians the Secretary of the Interior, is hereby authorized to pay to the legal representatives of R. V. Belt (Mrs. Jena Belt and William O. Belt), such sum, not exceeding $25,000, as he, after a proper hearing, may fix as compensation justly and equitably due the said Belt and associates on a quantum meruit for their services in recovering for the said Pottawatomie Indians the annuities withheld from them, under contract with representatives of said Indians approved by the Commissioner of Indian Affairs November first, nineteen hundred and two."

Act of June 30, 1919 (41 Stat. 29)

"For the support and civilization of those portions of the Wisconsin Band of Pottawatomie Indians

residing in the States of Wisconsin and Michigan, and to aid said Indians in establishing homes on the lands purchased for them under the provisions of the Act of Congress approved June 30, 1913, $15,500, or so much thereof as may be necessary, said sum to be reimbursed to the United States out of the appropriation, when made, of the principal due as the proportionate share of said Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared as set forth in House Document Numbered 830 (Sixtieth Congress, first session), and the Secretary of the Interior is hereby authorized to make per capita payment of $40 to said Indians out of said funds: *Provided*, That no further expenditures be authorized or made under appropriations heretofore enacted making provisions for the purchase of land and the clearing of same for said Potawatomie Indians: *Provided further*, That from the sums heretofore appropriated for said Pottawatomie Indians the Secretary of the Treasury is hereby authorized and directed to pay to Erik O. Morstad, of Laona, Wisconsin, in person and in full satisfaction for services rendered, the sum of $2,000."

Act of May 29, 1928 (45 Stat. 901)

"Payment to Pottawatomie Indians of Wisconsin and Michigan: For the Wisconsin Pottawatomie Indians of Wisconsin and Michigan, $6,839, this sum being the unappropriated balance found due said Indians under the treaty of September 27, 1833 (Seventh Statutes at Large, page 442), and the Act of June 25, 1864 (Thirteenth Statutes at Large, page 172); and the unexpended balances of appropriations made for the purpose by the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 156) May 25, 1918 (Fortieth Statutes at Large, page 589), and June 30, 1919 (Forty-first Statutes at Large, page 29), aggregating $37,044.55, together with the unexpended balance of $4,347.73 of the appropriation for the purchase of land for said Indians contained in the Act of June 30, 1913 (Thirty-eighth Statutes at Large, page 102), which have been carried to the surplus fund of the Treasury, are hereby reappro-

priated; and the foregoing amounts aggregating $48,231.28 shall remain available until June 30, 1929, and be subject to expenditure for the benefit of said Indians, or payment to them, in the discretion of the Secretary of the Interior, as authorized by the Act of February 29, 1928."

Act of February 14, 1920 (41 Stat. 432)

"The unexpended balance of the appropriation for the fiscal year 1918, approximating $55,057.37, is hereby reappropriated and made available until expended for the support and civilization of those portions of the Wisconsin Band of Pottawatomie Indians residing in the States of Wisconsin and Michigan: *Provided, however,* That the above-mentioned sum shall be used only for the purposes set forth in section 25 of the Act approved May 18, 1916 (Thirty-ninth Statutes at Large, pages 156 and 157), and section 24 of the Act approved March 2, 1917 (Thirty-ninth Statutes at Large, page 991)."

APPENDIX II

BEFORE THE

Indian Claims Commission

Docket No. 15-J

THE PRAIRIE BAND OF POTAWATOMI INDIANS, ET AL.,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Docket No. 71-A

THE CITIZEN BAND OF POTAWATOMI INDIANS, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Defendant.

HANNAHVILLE INDIAN COMMUNITY, ET AL.,
Intervening Petitioners.

Decided: September 19, 1956

FINDINGS OF FACT RELATING TO MOTION TO DISMISS INTERVENING PETITION

The Commission makes the following findings of fact:

1. The claims presented in this suit involve questions of adequate compensation for two tracts of land. One, located in Iowa, was granted by treaty in 1833 to the "United Nation of Chippewa, Ottawa, and Potawatomie Indians" which by the same treaty ceded to the United States certain lands in Illinois and Wisconsin. This group, hereinafter referred to as the "United Nation", an entity comprising a dominant group of Potawatomi

Indians, with which Indians of Chippewa and Ottawa ancestry were affiliated, is further described and identified below in Findings 11-14.

The other tract, located on the Osage River in Kansas, was granted by treaty in 1837 to the "Potawatomies of Indiana", who are identified below in Findings 11, and 23-24.

EVIDENCE

See petitions, 71-A and 15-J; treaty of September 26, 1833, 7 Stat. 431; treaty of February 11, 1837, 7 Stat. 532; and treaty of June 5 and 17, 1846, 9 Stat. 853.

2. By a treaty with the United States made at Council Bluffs, Iowa, on June 5, 1846, and on the Osage River in Kansas on June 17, 1846, all the Indian bands on the two tracts were united to form the Potawatomi Nation and the Nation ceded the two tracts to the United States and removed as a unit to another tract, on the Kansas River in Kansas. The term "Potawatomi Nation" hereinafter refers to this entity.

Subsequently the Potawatomi Nation was divided into two bands: the Prairie Band of Potawatomi Indians, which is still located in Kansas on a reserve carved out of the Kansas River tract, and the other, the Citizen Band of Potawatomi Indians of Oklahoma, which, subsequent to 1867, removed to Oklahoma and is still located there. The Prairie Band and the Citizen Band have been recognized by the Government as successors of the Potawatomi Nation.

The Prairie Band is the petitioner in No. 15-J, and the Citizen Band is the petitioner in No. 71-A.

EVIDENCE

The division of the Potawatomi Nation into the Citizen Band and the Prairie Band followed the treaties of November 15, 1861, 12 Stat. 1191, and

February 27, 1867, 15 Stat. 531. That the Citizen and Prairie Bands are successors in interest of the Potawatomi Nation which moved to the Kansas River in Kansas has been conceded by the defendant in Docket Nos. 15-B and 111, consolidated for trial. In Docket Nos. 15-B and 111 see petitioners' findings 1-23, and defendant's brief, at page 2. This conclusion has been conceded in this case (Tr. 843) and is not disputed by any of the parties.

3. Both the Prairie Band and the Citizen Band are organized bands of American Indians having capacity to present claims under the Indian Claims Commission Act.

EVIDENCE

This is not in dispute. See citations under Finding 2.

4. The intervenors, two organized Indian communities, the Hannahville Indian Community located in northern Michigan and the Forest County Potawatomi Community located in northern Wisconsin, and six individual Indians joined with them, all assert an interest in the claims.

On of the individual intervenors, Elijah Petonquot, has not been identified. The other five have given testimony as follows:

Frank Wandahsego, Sr., a member of the Hannahville Indian Community, and Valentine Ritchie and Ike (Isaac) George, members of the Forest County Potawatomi Community, claim descent from Potawatomi Indians who in 1833 were members of the United Nation, but who did not move to Iowa with the United Nation. Michael Williams claims descent from members of the Pokagon Band, a group of Potawatomi Indians for whom special provision was made in the 1833 treaty. Albert Mackety claims descent from members of the band known as the Potawatomi of Huron.

EVIDENCE

See depositions of the intervenors, Int. Ex. I-96, I-97, I-98, I-99, I-106; testimony of Albert Mackety, Tr. 820-827; testimony of Michael Williams, Tr. 1112-

1113; and testimony of Harry Ritchie, Tr. 1182-1193. Harry Ritchie's testimony was endorsed by his brother, Valentine Ritchie, Tr. 1212.

5. The two communities referred to in Finding 4 have asserted no claims in their own right. The intervenors' claims are that they represent Indians whose ancestors were members of the Potawatomi Nation which owned the lands for which additional compensation is sought, and that they are entitled to participate in the suit and in any recovery. The evidence discloses that the intervenors are members of three distinct classes: (1) descendants of Potawatomi Indians who resided in Wisconsin in 1833 and who did not move westward; (2) descendants of members of the Pokagon band; (3) descendants of members of a band known as the Potawatomi of Huron.

The two communities referred to may include some members of the first class. The individual intervenors appear to include members of all three classes. The first class will be referred to hereinafter as the Wisconsin Indians. The second class will be referred to hereinafter as the Pokagon band. The third class will be referred to hereinafter as the Huron band.

EVIDENCE

The evidence relating to the Wisconsin Indians is set out below under Findings 49 to 58; that relating to the Pokagon band under Findings 40 to 48; and that relating to the Huron band under Findings 30 to 39.

6. In their various activities, including the holding and use of land and their dealings with respect thereto, the Potawatomi Indians during the period 1795 - 1833 were divided into various separate tribes or bands, residing in different areas, and acting politically as independent units. References to the Potawatomi tribe which appear to relate to all the Indians of Potawatomi ancestry, apply the word "tribe" in its ethnic connotation, as describing a group sharing a common name and language, and having

many customs in common. A "tribe" in the political sense was a group, generally occupying an unbroken geographical area, and having some central authority which may have acted either continuously or intermittently as the need arose. Treaties and land cessions, were made, and various political and economic activities were carried out, by the Potawatomi bands, which were "tribes" in the political sense of that word.

EVIDENCE

See testimony of Dr. Wallace, Tr. 933-934.

7. In the years 1795 to 1833, the Potawatomi Indians resided in two areas geographically separated from each other. One group, known as the Forest Potawatomi, resided in northern Wisconsin and northern Michigan, only as far south as L'Arbre Croche. The other group, at one time known as the "Mascouten" or "Prairie" Potawatomi, comprised the great majority of the Potawatomi Indians who had separated from the Forest Potawatomi in the course of an earlier southward migration, and resided between 1795 and 1833 around the southern part of Lake Michigan. Since the word "Prairie" was part of various names applied at various times to different groupings without regard necessarily to the characteristics of their contemporaneous or earlier modes of life, the Potawatomi Indians who resided around Lake Michigan in the period specified will be referred to as the southern Potawatomi.

The areas in which the southern Potawatomi resided, in terms of the states which were eventually formed from those areas were: southern Michigan, northwestern Ohio, northern Indiana, northern Illinois, and southern Wisconsin.

The Forest Potawatomi and the southern Potawatomi spoke different dialects of the Potawatomi language.

EVIDENCE

See testimony of Dr. Wallace, Tr. 936-942; Pet. (71-A) Ex. A-55, and Pet. (15-J Ex. 31 at page 16).

With respect to the specific areas inhabited by the various bands of the southern Potawatomi see also citations under Finding 11, below.

8. The Forest Potawatomi resided among a larger population of Indians,—other than Potawatomi,—and made no treaties with the United States in which the group was identified as an entity. Between the areas in which the Forest Potawatomi resided and the areas in which the southern Potawatomi resided lay the lands of the Menominee and Winnebago tribes.

The Forest Potawatomi had no political connections with the southern Potawatomi, and the two groups did not share any lands in common.

EVIDENCE

The Forest Potawatomi lived in an area also occupied by Chippewa, Ottawa, Menominee and Winnebago Indians (Tr. 979), and were not politically connected with the southern Potawatomi (Tr. 941).

Alanson Skinner's monograph on the Potawatomi, published in 1924 by the Public Museum of the City of Milwaukee, identifies this group as the Na'nosi or "Between" people, whose culture resembled that of the Ottawa, Ojibway [Chippewa] and Menominee more than that of the southern Potawatomi (Pet. (15-J) Ex. 31, p. 16). Another authority dates the separation of the Forest Potawatomi from the southern Potawatomi as of the time of the American Revolution (Def. Ex. 82, at p. 230).

An examination of Royce's maps of Michigan and Wisconsin discloses that the northern limits of cessions made or participated in by the bands which made up the southern Potawatomi (See Finding 11) were a line south of Saginaw in southeastern Michigan (No. 66, Royce's map Michigan 1, treaty of Nov. 17, 1807, 7 Stat. 105); the Grand River in southwestern Michigan (No. 117, Royce's map Michigan 1, treaty of Aug. 29, 1821, 7 Stat. 218); the southern tip of Lake Winnebago in southeastern Wisconsin (No. 187, Royce's map Wisconsin 1, treaty of Sept. 26, 1833, 7 Stat. 431); and the Wisconsin River in

southwestern Wisconsin (No. 147, Royce's map Wisconsin 1, treaty of July 29, 1829, 7 Stat. 320.).

Both the treaty of August 19, 1825 (7 Stat. 272), which fixed boundaries (See Articles 7, 8, and 9) and the 1833 treaty cited (See Article 1st) show the Winnebago and Menominee to be the northern neighbors of the Potawatomi in Wisconsin. Cessions to the United States of the lands in central and northern Michigan and Wisconsin were made as follows [The numbers identify tracts shown on Royce's maps, Michigan 1 and Wisconsin 1]:

Tract No.	Location	Ceded by	Treaty
111	Michigan	Chippewa	Sept. 24, 1819, 7 Stat. 203
205	Michigan	Ottawa and Chippewa	March 28, 1836, 7 Stat. 491
219	Michigan & Wisconsin	Menominee	Sept. 3, 1836, 7 Stat. 506
261	Michigan & Wisconsin	Chippewa	Oct. 4, 1842, 7 Stat. 591
158 & 160	Wisconsin	Menominee	Feb. 8, 1831, 7 Stat. 342
174	Wisconsin	Winnebago	Sept. 15, 1832, 7 Stat. 370
242	Wisconsin	Chippewa	July 29, 1837, 7 Stat. 536
271	Wisconsin	Menominee	Oct. 18, 1848, 9 Stat. 952

9. The southern Potawatomi shared a common language, culture, religion and social customs. Politically, however, the southern Potawatomi between 1795 and 1833 were divided into five organized units, which are referred to herein as bands. Each band acted as an entity, particularly with respect to transactions with the United States involving lands.

EVIDENCE

See testimony of Dr. Wallace, Tr. 942-944, 953-959, 965-967, 969-970. See also evidence cited under Finding 11.

10. The Potawatomi Indians were members of the particular bands with which they resided. By their own custom, Potawatomi Indians who made a permanent

change in residence from the lands of one band to the lands of another Potawatomi band, or of another ethnic tribe, made a corresponding change in membership and affiliation. In the same manner, Indians of other ethnic tribes became affiliated with particular Potawatomi bands by residence and adoption.

According to Potawatomi custom, descent from members of the band was a sufficient condition for membership if accompanied by continued residence with the band. The Potawatomi followed the general Algonkian custom of tracing descent in the paternal line. Thus, an Algonkian Indian born of a mixed marriage, would consider himself, and would be considered, as descended from the tribe or band of his father.

EVIDENCE

See testimony of Dr. Wallace, Tr. 935-938, 946-947, 950-952, 985.

Intervenor Michael Williams in his testimony identified Leopold Paul Pokagon, the chief whose followers became known as the Pokagon band as "not a Potawatomi by birth, nor blood; rather more Chippewa than Ottawa." (Tr. 1117). The witness referred to Pokagon's "naturalization as a Potawatomi." (Tr. 1118). The presence among the Potawatomi in Iowa of members of non-Potawatomi ancestry was noted by Government officials (Report of Agent Richard S. Elliot, July 24, 1845, Def. Ex. 51).

11. The five bands into which the southern Potawatomi were divided, and their general locale, were the following:

(1) The United Nation of Chippewa, Ottawa and Potawatimi, residing on the west side of Lake Michigan in Illinois and southern Wisconsin, and particularly on the Illinois, Milwaukee and Monitowoc Rivers and their tributaries. This band is hereinafter referred to as the "United Nation".

(2) The Potawatomi of the Prairie and Kankakee, residing south of Lake Michigan in the vicinity of the

Kankakee River and the Illinois-Indiana border. This band is hereinafter referred to as the Kankakee band.

(3) The Potawatomi of the Wabash, residing southeast of Lake Michigan, in northwestern Indiana, north of the Wabash River. This band is hereinafter referred to as the Wabash band.

(4) The Potawatomi of St. Joseph,—more commonly known from about 1830 on, as the Potawatomi of Indiana and Michigan,—residing in the general vicinity of the St. Joseph River on the east side of Lake Michigan, in southwestern Michigan and northern Indiana. This band is hereinafter referred to as the St. Joseph band.

(5) The Potawatomi of Huron, residing in the vicinity of the Huron and Raisin Rivers, in southeastern Michigan and northwestern Ohio. This band is hereinafter referred to as the Huron band.

The United Nation was located farthest west, and the Huron band farthest east, with the other three bands residing in the area between them.

EVIDENCE

See testimony of Dr. Wallace, Tr. 943-945, and Pet. (71-A) Ex. 38. Each of the five bands named made one or more treaties involving land in which the particular band was identified as the party to the treaty.

United Nation. The United Nation made the treaties of August 24, 1816, 7 Stat. 146; July 29, 1829, 7 Stat. 320; and September 26, 1833, 7 Stat. 431; by which contiguous tracts of land in Illinois and Wisconsin were ceded to the United States. The United Nation also participated with other tribes in two treaties relating to the same lands and adjoining lands of the other participating tribes. These were the treaties of August 19, 1825, 7 Stat. 272; and August 25, 1828, 7 Stat. 315. For a further discussion of these treaties, see Findings 13-14 and 17-18 and evidence cited, below.

Kankakee band. The treaty of October 20, 1832, 7 Stat. 378, was made with the Potawatmie Tribe of Indians of the Prairie and Kankakee. The land

ceded was located south of Lake Michigan on the Kankakee River in northeastern Illinois, No. 177 on Royce's map Illinois 1.

Wabash band. Six days after the Kankakee band treaty cited, on October 26, 1832, an adjoining tract in northwestern Indiana (Royce No. 180) was ceded by "the Pottawatomie Indians". (7 Stat. 394). However, the first appropriation act, approved March 2, 1833, for carrying out the Government's obligations under this treaty, was made for the benefit of "the Pattawatamies of the Wabash", (4 Stat. 636, 638).

St. Joseph band. On the day following the treaty with the Wabash band, a treaty was made with "the Potowatomies of the State of Indiana and Michigan Territory" for the cession of lands identified by Royce as No. 181 on his map of Indiana. (Treaty of October 27, 1832, 7 Stat. 399). The village of To-pen-ne-bee, identified as principal chief (see Article III) was located on the St. Joseph River in southwestern Michigan (see Royce's map, Michigan 1). Topenebee (spelled Thu-pe-ne-bu) signed the Greenville treaty for the "Putawatames of the River Saint Joseph." (See the treaty, 7 Stat. 49, at page 54).

Huron band. By the treaty of July 4, 1805 (Archives No. 44) lands in northern Ohio (Royce No. 53) were sold to two Connecticut land companies by various Indian groups including a so-called "Pottawatima Nation." Another treaty of the same date (7 Stat. 87) provided for payment of a share of the consideration to "such of the Pottawatima nation as reside on the river Huron of lake Erie, and in the neighbourhood thereof . . ." The treaty of November 17, 1807 (7 Stat. 105) by which lands in northwestern Ohio and southeastern Michigan (Royce No. 66) were ceded to the United States by a number of tribes, provided for payment of a permanent annuity to "such of the Pottawatamies, as now reside on the river Huron of lake Erie, the river Raisin, and in the vicinity of the said rivers." (See Art. H). Other evidence relating to the Huron band is set out below under Findings 30-39.

A number of treaties, involving lands in Ohio, Indiana and Michigan, do not identify particular Potawatomi groups but describe the treaty party as the Potawatomi "tribe" or "nation". It is unnecessary for a determination of the issues now before the Commission to identify the Indian groups which made these treaties. A full list of the treaties is set out in the appendix.

12. The United Nation was a band of Potawatomi Indians, with which individuals or small groups of Ottawa and Chippewa ancestry were affiliated or federated.

EVIDENCE

The organization of Potawatomi, Ottawa and Chippewa Indians in a unified tribe or band followed the tradition of the three ethnic groups once having been one people. (Pet. (71-A) Ex. 38). The Chippewa and Ottawa Indians in the United Nation were, politically, Potawatomi (Tr. 943). Governor Edwards of Illinois Territory referred to this group in 1815 as "Pottowotmies intermixed with band of Chippewas & Ottawas" (Pet. 71-A) Ex. 6) and in 1816 as "the confederated Tribes of Ottawas, Chippawas & Pottowotomies of the Illinois river, and western side of Lake Michigan" (Pet. (71-A) Ex. 7). The lands ceded by the United Nation in 1833 were described by variout Government officials, as "the land of these Pottawatomies" (Governor Porter of Michigan Territory (Pet. (71-A) Ex. 11)); "the Potawatimies . . . their territory" (Commissioner Herring (Pet. (71-A) Ex. 9)); "the Potawatamie Tribe . . . their lands" (Agent Owen (Pet. (71-A) Ex. 10)). The United Nation was under the jurisdiction of Indian Agent Thomas J. V. Owen at Chicago. The "Indians of his agency" were identified as "Pottawatamies" (Pet. (71-A) Ex. 11). The five treaties concluded between the United States and the United Nation described the latter variously as: "the united tribes of Ottawas, Chipawas, and Pottowotomees, residing on the Illinois and Melwakee rivers, and their waters, and on the southwestern parts of Lake Michigan" (1816, 7 Stat. 146); "the Ottawa, Chippewa, and Potawatomie tribe of the Illi-

nois" and the "Illinois Indians" (1825, 7 Stat. 272, Art. 9); "the United Tribes of Potawatamie, Chippewa and Ottawa Indians" (1828, 7 Stat. 315); the United Nations of Chippewa, Ottawa, and Potawatamie Indians, of the waters of the Illinois, Milwaukee, and Manitoouck Rivers" (1829, 7 Stat. 320); "the United Nation of Chippewa, Ottowa and Potawatamie Indians" (1833, 7 Stat. 431).

With reference to the 1816 treaty, sometimes referred to as the Edwardsville treaty, it was observed by a Government official in 1822 that "the Indians are in fact almost all Potawatomies" (Def. Ex. 78). A census of the Indians under the Chicago agency in 1833 showed 4,489 Potawatomi, 864 Ottawa and 453 Chippewa (Def. Ex. 54).

In August 1825, the United States assembled at Prairie du Chien a number of Indian tribes residing between Lake Michigan and the Missouri River. A treaty was concluded August 19, 1825, in which the boundaries of the lands of neighboring tribes were described, including lands of the United Nation in northeastern Illinois and southeastern Wisconsin west side of Lake Michigan.

EVIDENCE

Article 9 of the Prairie du Chien treaty (Aug. 19, 1825, 7 Stat. 272), which deals with the boundaries of the lands of the United Nation, refers back to the treaty of Aug. 24, 1816 (7 Stat. 146) which had settled a disputed land claim between the United States and the United Nation (see preamble to 1816 treaty). The 1816 and 1825 treaties establish the United Nation as an entity in the area shown on Royce's maps, Illinois 2 and Wisconsin 1, as Nos. 147, 148 and 187.

That the 1825 treaty was dealing with the boundaries of politically organized groups rather than with ethnic "tribes" is clear from the fact that the Chippewa "tribe," and the United Nation which included Chippewa Indians, were different and distinct parties to the treaty, and that the boundaries of the Chippewa "tribe" and of the United Nation were distinct and separated by the lands of other Indian

groups (see Articles 5, 6, 7, 8, and 9). Note that the United Nation was also referred to on occasions as "the Illinois Indians" (see Art. 9 of Prairie du Chien treaty, Aug. 19, 1825 (7 Stat. 272), and Def. Ex. 78).

14. In 1829, the United Nation ceded to the United States Royce Areas 147 and 148, referred to above in Finding 13. In 1833, the United Nation still held its interest in Royce Area 187, also referred to in Finding 13. Royce Area 187, bordering on Lake Michigan, in northeastern Illinois and southeastern Wisconsin, was estimated by United States officials to comprise five million acres.

EVIDENCE

See treaties of July 29, 1829, 7 Stat. 320, and Sept. 26, 1833, 7 Stat. 431.

15. In October 1832, three successive treaties were made respectively with the Kankakee, Wabash and St. Joseph bands whereby their respective lands south of Lake Michigan, in Illinois on the border of Indiana and in northern Indiana, were ceded to the United States. The treaties with the Wabash and St. Joseph bands provided for a number of small tracts including the Indian villages to be reserved to the village chiefs and the inhabitants of the villages.

EVIDENCE

See treaties of Oct. 20, 1832, 7 Stat. 378; Oct. 26, 1832, 7 Stat. 394; and Oct. 27, 1832, 7 Stat. 399; and evidence cited under Finding 11.

16. In 1833, some of the Potawatomi Indians still occupied small reservations comprising approximately 104,960 acres, in southern Michigan. The residents on these reservations included some members of the St. Joseph band and of the Huron band. The villages of the principal chief of the St. Joseph band, To-pen-e-bee, and of another chief of that band, Pokagon, were located within these reservations.

EVIDENCE

The acreage in the reservations was computed from the description in Article 1st of the "Articles Supplementary" to the 1833 treaty, 7 Stat. 431, 442. Negotiations for the sale of the reservations were had with the "chiefs and headmen of the St. Joseph and Notta-wa-se-pe bands." (See Journal of the Proceedings of September 27, 1833, Pet. (71-A) Ex. 14, typewritten copy at page 10). Leading chiefs who signed the Supplementary Articles, headed by To-pen-e-bee, were those who had negotiated the treaty of October 27, 1832 with the St. Joseph band (7 Stat. 399). The "Notta-wa-se-pe band" is obviously a term applied to the Indians residing at or near the village of Notta-wa-se-pe. That they included members of the Huron band is inferred from the fact that three reservations retained by the Huron band out of the cession made by the treaty of Nov. 17, 1807 (7 Stat. 105) were exchanged for other lands in the vicinity of Notta-wa-se-pe under the treaty of Sept. 19, 1827 (7 Stat. 305). The reservations acquired under the 1827 treaty were ceded under the 1833 treaty.

17. In April 1833, treaty commissioners were directed to negotiate with the United Nation for the purpose of obtaining a cession of the remaining lands of that band, and for the removal of the band west of the Mississippi River. At the same time the treaty commissioners were instructed to invite the Potawatomi Indians residing on the reservations in southern Michigan to the treaty, so as to obtain also the cession of these reservations, and the removal of the Indians thereon west of the Mississippi.

EVIDENCE

See Letter, Secretary of War Cass, April 8, 1833, Pet. (71-A) Ex. 13, in which, after giving instructions to the treaty commissioners to obtain the cession which was eventually made by the treaty of Sept. 26, 1833, he instructed the commissioners to obtain a cession of their reservations from the Potawatomi bands in Michigan "if they can be induced to attend to the treaty." It is clear that the presence of these

bands in Michigan was not considered necessary to effect the main cession contemplated.

18. Negotiations were conducted at Chicago, Illinois, in August and September 1833, between the United States treaty commissioners and representatives of the United Nation which resulted in a treaty concluded September 26, 1833, for the cession to the United States of the lands west of Lake Michigan, shown on Royce's maps, Illinois 2 and Wisconsin 1, as Area 187. The treaty provided for a grant to the United Nation of five million acres in what is now the State of Iowa. The tract so granted, with boundaries subsequently amended, is one of the tracts involved in this suit.

This grant was made pursuant to a promise of the treaty commissioners that in addition to paying the full value of the lands ceded, the United States would grant the United Nation an equivalent quantity of land west of the Mississippi River for the United Nation to remove to and occupy as its new home.

EVIDENCE

See treaty of Sept. 26, 1833, 7 Stat. 431, and the Journal of Treaty Proceedings, Pet. (71-A) Ex. 14. During the course of the negotiations Governor Porter made the following statement to the United Nation:

> "If you determine to sell your lands the Commissioners now before you are authorized by instructions from your Great father to give you the full value of them. Moreover, you shall have as much and as good a country beyond the Mississippi as that which you now possess." [Pet. (71-A) Ex. 14. See typewritten copy at page 6.]

19. Representatives of the St. Joseph band were present during the negotiations, but the band was not a party to this treaty. However the principal chief of the St. Joseph band, To-pen-e-bee, put his mark to the treaty, although none of the other representatives of that band did so.

EVIDENCE

Negotiations for the sale of the Wisconsin and Illinois lands were had with the representatives of the United Nation and only these representatives, apart from To-pen-e-bee, signed the treaty on September 26, 1833. (See: Journal of Proceedings, Pet. (71-A) Ex. 14, typewritten copy at pp. 1-40, and testimony of Dr. Wallace, Tr. 980; see 7 Stat. 431, at p. 434, for United Nation signatories of treaty concluded Sept. 26th, and Id. at page 443 for signatories of "Articles Supplementary" concluded Sept. 27th).

20. On Sept. 27, 1833, the representatives of the Indians occupying the Michigan reservations were advised by the treaty commissioners that a treaty had been concluded on the preceding day by which the United Nation had ceded its lands and that if the Indians inhabiting the reservations were willing to sell their reservations they would be permitted, with the consent of the United Nation, to participate in the benefits of the treaty concluded the preceding day.

At the same time a group of the Indians who had been converted to the Catholic religion were advised that their desire to move to northern Michigan instead of west of the Mississippi would be gratified and that their annuities would be paid in Michigan.

EVIDENCE

See Journal of Proceedings, Pet. (71-A) Ex. 14, typewritten copy at page 42.

21. By an agreement concluded September 27, 1833, designated "Articles Supplementary" to the treaty of September 26, 1833, it was provided that the Michigan reservations be ceded to the United States and that the groups of these reservations "shall be considered as parties to the said treaty to which this is supplementary, and be entitled to participate in all the provisions therein contained, as a part of the United Nation."

These "Articles Supplementary" were subscribed on behalf of the Indians on the Michigan reservations.

EVIDENCE

See Articles Supplementary to 1833 treaty, 7 Stat. 431, 442.

22. A special provision appended to the "Articles Supplementary" provided as follows:

> "And, as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan, have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties and that arising from the sale of the reservation on which they now reside shall be paid to them at, L'arbe, Croche." [7 Stat. 431, 445].

The group which was authorized to remain in Michigan was subsequently known as the Pokagon band. Pokagon was one of the chiefs of the original St. Joseph band. His village was located in Michigan near the Indiana border.

EVIDENCE

Pokagon's village is shown on Royce's map of Michigan. In the treaty of Oct. 27, 1832, 7 Stat. 399, Pokagon (spelled Poch-a-gan) was identified as "second Chief" (See Art. III.). He was chief of those who remained in Michigan for religious reasons (Int. Ex. I-66).

23. In the years 1834, 1835 and 1836, a number of treaties were concluded by which the reservations in Indiana retained by the village communities of the Wabash and St. Joseph bands under the treaties made in October 1832 were ceded to the Government. The first three of these treaties, concluded respectively on December 4, 1834, December 10, 1834, and December 16, 1834, made no reference to the removal of the Indians westward.

The last-cited treaty provided for the cession of the two sections on the Tippecanoe River where the Potawatomi mills were located, and by this treaty it was agreed that the United States was to be relieved of its treaty obligation to support a miller.

Between December 1834 and September 1836 ten treaties were concluded for the cession to the United States of lands reserved under the two 1832 treaties in Indiana. Each of these ten treaties contained language substantially as follows:

> "The above named chief and his band agree to yield peaceable possession of the above sections of land and remove to the country west of the Mississippi provided for the Pottawatomy nation by the United States, within two years from this date." [7 Stat. 490]

EVIDENCE

The 13 treaties cited appear in 7 Stat. respectively at pp. 467 (2), 468, 469, 490, 498, 499, 500, 501, 505, 513, 514 and 515.

24. On February 11, 1837 a treaty was concluded at Washington, D. C. by which the United States agreed to convey by patent to "the Potawatomies of Indiana" a tract of land on the Osage River southwest of the Missouri River in what is now the State of Kansas. This treaty was made with representatives of village bands for which reservations had been made under the treaties of October 26 and 27, 1832, with the Wabash and St. Joseph bands respectively.

This tract on the Osage River is the second of the two tracts involved in this suit.

EVIDENCE

See treaty of Feb. 11, 1837, 7 Stat. 532.

25. Between 1836 and 1842, the United Nation and the great majority of its members were removed to the

band's new home in Iowa. The Kankakee band, closest neighbor of the United Nation, was also removed to the Iowa tract.

During the same period, the Wabash and St. Joseph bands and the great majority of their members were removed to the tract on the Osage River. Some members of the Kankakee band moved to that tract with them.

EVIDENCE

Proportions moving west. Contemporary official population estimates of the United Nation ranged from 5,806 (Def. Ex. 54) to 6,734 (Pet. (71-A) Ex. 20). The latter figure probably included Potawatomi of Indiana (Pet. (71-A) Ex. 20). An estimate of the total Potawatomi population was 8,521, but that estimate, as reported by the Commissioner of Indian Affairs in 1840, apparently included a double count of the Potawatomi of Indiana (Pet. (71-A) Ex. 20). Contemporary figures for the numbers who removed westward range from 5,297 (Def. Ex. 27, Pet. (71-A) Ex. 20) to 5,930 (Def. Ex. 34, Int. Ex. I-154). Those remaining in Wisconsin were described in 1841 as "a remnant of the United Nation . . . about two hundred and fifty in number" (Int. Ex. I-29). The Potawatomi were "much diminished by death" (Pet. (71-A) Ex. 20). At the time of the 1846 treaty there were "somewhat upwards of 2000" on the Iowa tract (Int. Ex. I-38) and about the same number on the Osage River tract (Int. Ex. I-50-A).

Potawatomi bands in the west. All four bands are named in the preamble to the treaty of 1846, 9 Stat. 853, and were specifically referred to during the 1845 negotiations at Washington (1845 Journal, Pet. (71-A) Ex. 33, typewritten copy at pp. 6, 9). Part of the Kankakee band was located on the Osage River with the St. Joseph and Wabash bands (Int. Ex. I-50-A) and part, under Wah-bon-seh (alternative spellings, Wah-pon-seh, Wau-bun-see), a Kankakee band chief (treaty of Oct. 20, 1832, 7 Stat. 378, 380; testimony of Dr. Wallace, Tr. 945), was located in Iowa (1845 Journal, Pet. (71-A) Ex. 33, typewritten copy at p. 9). In a talk to the U. S. treaty commissioners at Wash-

ington, delivered on behalf of the Indians by Agent R. S. Eliot, he said, " . . . the people who made the treaty at Chicago, are at Council Bluffs." Id., p. 14.

26. The Huron band, the Pokagon band, and some members of the United Nation, referred to in Finding 4 as the Wisconsin Indians, did not remove westward. Findings 30 to 39, 40 to 48, and 49 to 58, relate respectively to these groups in the order named.

EVIDENCE

The evidence as to each group is set out under the findings specified.

27. On June 5, 1846, a treaty was concluded at Council Bluffs, Iowa, with the representatives of the bands then residing in Iowa, which provided for a cession of the Iowa tract and of the Osage River tract and the purchase by the Indians of a new tract of land on the Kansas River in Kansas. On June 17, 1846, this treaty was ratified by the bands then residing on the Osage River in Kansas. The treaty provided for a union of the four bands: the United Nation, the Kankakee band, the Wabash band, and the St. Joseph band, under the name of the Potawatomi Nation. The treaty provided for that Nation and its members to "receive their annuities and other benefits in common, and to abolish all minor distinctions of bands by which they have heretofore been divided. . ."

EVIDENCE

See treaty, 9 Stat. 853.

28. Subsequent to the 1846 treaty and in accordance therewith the annuities payable under the various treaties theretofore made with the individual bands united by the 1846 treaty, were combined and paid to the Potawatomi Nation. These included all outstanding annuities under Potawatomi treaties except those payable to the Potawatomi of Huron under the 1807 treaty made with that band.

EVIDENCE

Prior to the 1846 treaty, appropriations for annuity obligations were made in terms of the groups as identified by the language of the treaties. The last general appropriation act prior to ratification of the 1846 treaty, the Act of June 27, 1846 (9 Stat. 20), appropriated for "the Chippewas, Ottowas, and Pottawatomies" (at p. 22) amounts due under the treaties of 1829 and 1833; for "the Pottawatomies of the Prairie" (at p. 28), "the Pottawatomies of the Wabash" (at p. 29), and "the Pottawatamies of Indiana" (at p. 29) payments due respectively under the treaties of Oct. 20, 26, and 27, 1832; for "the Pottawatomies of Huron" (at p. 28), for the 1807 treaty annuity; and for "the Pottawatomies" (at p. 28), payments due under various other treaties in which the participating band or bands had not been identified. The first general appropriation act which followed ratification of the 1846 treaty, the Act of March 1, 1847 (9 Stat. 132), appropriated the 1807 treaty annuity for the Potawatomi of Huron (at p. 141) and all the other annuities for "the Pottawatomies" (at pp. 140-141). This was continued until 1869, when the division of the assets of the Potawatomi Nation between the Citizen and Prairie bands was begun. (See 9 Stat. 259; 389; 551. 10 Stat. 49; 233; 324; 693; 694. 11 Stat. 73, 74; 178, 179; 281; 396, 397. 12 Stat. 53; 228, 229; 520; 782, 783. 13 Stat. 169; 548. 14 Stat. 262; 505, 506. 15 Stat. 212, 213.)

With respect to a later division among the Citizen and Prairie bands and the Potawatomi of Huron, of monies due and unpaid under treaties, see Finding 34, and evidence cited.

29. As a consequence of treaties concluded in 1861 and 1867 with the Potawatomi Nation, then residing on the Kansas River in Kansas, the Potawatomi Nation was divided into two bands: one known thereafter as the Citizen Band, Petitioner in Docket No. 71-A; the other known as the Prairie Band, Petitioner in Docket No. 15-J. Thereafter assets of the Potawatomi Nation were divided between the two bands in accordance with proportions,

1400 parts to the Citizen Band and 780 parts to the Prairie Band, which had been determined by a census and agreement between the bands.

EVIDENCE

Note that this finding, except for the figures 1400 and 780, is set out in greater detail as Petitioners' findings 3-15 in Dockets 15-B and 111, to which Defendant has made no objections (See Def. Br., Docket Nos. 15-B and 111, at p. 2).

The 1861 treaty (12 Stat. 1191) effected a division of lands by individual allotments (to the Citizen Band) and by creating a diminished reserve (for the Prairie Band). It also provided for a pro rata per capita distribution of assets of the Potawatomi Nation amonng those allottees who qualified and became citizens. The 1867 treaty (15 Stat. 531) provided for the acquisition by the Citizen Band of a new tract in Oklahoma. Lands in Oklahoma were re-ceded to the United States by the Citizen Band under the agreement of June 25, 1890 (26 Stat. 989, 1016).

The proportionate division of assets was determined by census and agreement between the bands. (See Def. Ex. 33 in consolidated dockets 15-B and 111).

Commencing in 1869, funds were appropriated for the Citizen Band, while the annual appropriations for annuities were gradually reduced to the fractionate share of the Prairie Band. (See: 16 Stat. 28; 348; 558. 17 Stat. 178; 451. 18 Stat. 162.

The 1867 treaty also provided for a commission to ascertain Potawatomi claims for insufficient payments under earlier treaties. The Commission made its report on Jan. 18, 1869 (House Ex. Doc. 61, 40th Cong., 3rd Sess., Int. Ex. I-62). By the Act of March 2, 1889, 25 Stat. 988, 989, Congress directed that the amount found due by the Commission be distributed per capita, 1400/2180 parts to the Citizen Band and 780/2180 parts to the Prairie Band. (With reference to the share in the award payable to the Huron Band, see Finding 34 below.)

30. The Huron band was first identified in a treaty with the United States in the Greenville treaty of August 3, 1795, made between the United States and twelve named Indian "tribes." This treaty, which established a general boundary line between the lands of the United States and the lands of the Indians, was subscribed separately on behalf of the St. Joseph band and on behalf of the Huron band. The treaty provided for a payment of a permanent annuity of $1,000 to the "Putawatimes."

EVIDENCE

See Greenville Treaty, 7 Stat. 49, at pp. 53, 54.

31. Subsequent to the Greenville treaty the United States made three treaties in which various Indian tribes or bands participated and by which lands adjoining Lake Erie in northern Ohio and southeastern Michigan were ceded to the United States. In two of these treaties, made at Fort Industry, July 4, 1805, and at Detroit, November 17, 1807, the Huron band was identified as the particular band of Potawatomi Indians which was one party to the treaty and which was entitled to payment for its interest in the land cessions involved. These two treaties provided for the cession to the United States of the lands which are identified as Areas 53 and 54 on Royce's map of Ohio and as Area 66 of which part is shown on Royce's map of Ohio and part on Royce's map, Michigan 1.

EVIDENCE

See treaties of July 4, 1805 (7 Stat. 87 and Archives No. 44) and Nov. 17, 1807 (7 Stat. 105). See also Royce's maps, Ohio and Michigan 1. The 1805 treaty, captioned as having been made with "the Wyandot, Ottawa . . . and Pottawatima nations", provided (Art. V. 7 Stat. 88) for certain payments to be made to "the Ottawa and Chipawa nations, and such of the Pottawatima nation as reside on the river Huron of lake Erie, and in the neighborhood thereof . . ." The 1807 treaty (Art. II) provided for pay-

ment of $1,666.66 to "the Pottawatomie nation" and of a perpetual annuity of $400 "to such of the Pottawatamies, as now reside on the river Huron of lake Erie, the river Raisin, and in the vicinity of the said rivers."

32. The Fort Industry treaty of July 4, 1805 provided for a payment of the sum of $16,000 to be divided among the Huron band and "the Ottawa and Chipawa nations."

Subsequently, the Huron band asserted its interest exclusive of any other Potawatomi band in the payment provided for under the 1805 treaty, and at the same time the Huron band relinquished any interest it might have in the permanent annuity provided for by the Greenville treaty. The United States recognized the exclusive interest asserted by the Huron band to the 1805 treaty payment.

EVIDENCE

See evidence cited under Finding 31. See also, Pet. (71-A) Ex. A-43, Int. Ex. I-151, and Int. Ex. I-153.

33. The Detroit treaty of 1807 provided for the payment of a permanent annuity of $400 to the Huron band exclusively. The annuity was paid to the Huron band in Michigan until it was commuted for the sum of $8,000 and that sum, appropriated under the Act of June 29, 1888 (25 Stat. 225), was paid to the members of the Huron band.

EVIDENCE

As noted above under Finding 31, the treaty provided for the payment of $1,666.66 to the "Pottawatamie nation." In 1808 this sum was divided, half being paid at Detroit to the Huron band, the other half being paid at Chicago to other Potawatomi, who cannot be identified from the present record. The permanent annuity, however, was all paid at Detroit to the Huron band (Int. Ex. I-150 and I-153). The Huron band still claimed this annuity after the westward removal of the other Potawatomi bands (Def.

Ex. 29) and the Government continued to list it as one of the annuities payable in the Michigan Superintendency (Def. Ex. 89). After the 1846 treaty with the Potawatomi Nation, this annuity was separately appropriated for the Huron band (See Finding 28 and evidence cited). Payment under the 1888 appropriation was made in 1889 (Int. Ex. I-71).

34. In accordance with a provision of the 1867 treaty referred to above in Finding 29, a commission was appointed by the President to investigate a claim that the obligations of the United States under various Potawatomi treaties had not been carried out in full. This commission studied all of the Potawatomi treaties between 1795 and 1846 and computed the obligations of the United States through the year 1861. The Commission reported $178,953.43 due under the stipulations of treaties which had not been fulfilled, after deducting overpayments made under some treaties. Of this total, the sum of $5,000 was reported to be due and unpaid under the treaty of July 4, 1805, and the sum of $4,400 was reported to be due and unpaid under the treaty of November 17, 1807. By the Act of March 2, 1889 (25 Stat. 988) Congress appropriated the total sum so reported and directed payment out of that sum of $9,400 to the Potawatomi of Huron, and payment of the balance in the proportions stated in Finding 29 above to the Citizen Band and the Prairie Band. Payment of $9,400 plus interest was made to the Huron band.

EVIDENCE

See "Recapitulation" in report of the President's commission, p. 30 of House Ex. Doc. 61, 40th Cong., 3rd Sess. (Int. Ex. I-62); and Int. Ex. I-72. Note that the 1805 and 1807 treaties are identified in the report cited by their proclamation dates, April 24, 1806 and Jan. 27, 1808, respectively.

35. The claim of the Pokagon band to a "just proportion of all annuities" pursuant to the special provision of the 1833 treaty referred to above in Finding 22, as pre-

sented to Congress and eventually to the Court of Claims, and as determined by the Court of Claims (Potawatomie Indians v. U. S., 27 C. Cls. 403), did not include a share in the permanent annuity of the Huron band under the 1807 treaty, but included shares in all the permanent annuities and all the short term annuities continuing beyond 1833 under the treaties with the other four Potawatomi bands.

EVIDENCE

Proceedings of the President's commission, cited in Finding 34, involved treaty obligations going back to 1795. The claim of the Pokagon band involved obligations subsequent to 1833 and consequently were limited to permanent annuities or short term obligations continuing beyond 1833. This excluded the Fort Industry treaty of July 4, 1805, but included the 1807 treaty. All treaties under which annuities had not yet expired, except the 1807 treaty, were included in the reports of Congressional Committees considering the Pokagon band claim (Sen. Rept. No. 111, 38th Cong., 2nd Sess., Def. Ex. 36 and Int. Ex. I-61; House Rept. No. 19, 38th Cong., 1st Sess., Int. Ex. I-60); in the petitions filed in the Court of Claims (Int. Ex. I-73 and I-74); and in the decision of the Court of Claims (27 C. Cls. 403.) See particularly the Court's Finding VIII.

36. The claim of the Wisconsin Indians, presented in a memorial to Congress in 1902, of a right to share in the annuities paid to the Potawatomi Nation likewise excluded the 1807 treaty with the Huron band but included all other treaties providing for payments beyond 1833 to the four Potawatomi bands. The report of the Secretary of the Interior in 1908 relating to this claim also excluded the 1807 treaty but included the other treaties.

EVIDENCE

See Memorial, Def. Ex. 40, also contained in Int. Ex. I-79, at p. 20 et seq. See list of treaties at p. 30.

See also, Table No. 2 at p. 3 of the Secretary's report (House Doc. No. 830, 60th Cong., 1st Sess., Def. Ex. 41, duplicated by Int. Ex. I-85).

37. The Huron band has at all times since 1795 been a group politically distinct from and independent of the United Nation, the Kankakee band, the Wabash band, the St. Joseph band, and the Potawatomi Nation.

EVIDENCE

See Findings 6, 9-11, 30-36, and evidence cited.

38. The Huron band did not have, and never claimed, any interest in the lands which have been identified as Royce Area 187 and which were ceded to the United States by the United Nation by the treaty of September 26, 1833. The Huron band never had, or claimed, any interest in any lands on the west side of Lake Michigan.

EVIDENCE

See Findings 9, 11-14, 16-18, and evidence cited.

39. The Huron band never acquired any interest in the lands ceded by the Potawatomi Nation in 1846.

EVIDENCE

See Findings 11-14, 16-18, and evidence cited. The U. S. Indian Agent at Detroit, describing the Indians under his jurisdiction in his annual report for 1860, referred to the "Pottawatomies of Huron, who have not participated in any treaty assigning them lands." (Int. Ex. I-56).

40. Subsequent to the treaty of September 27, 1833, the Pokagon band sought to obtain a residence among, and amalgamation with, the Ottawa Indians at L'Arbre Croche in northern Michigan. Permission to reside among them was refused by the Ottawa Indians and the band returned to southern Michigan, where they purchased lands from the United States.

EVIDENCE

See memorial of the Pokagon band and extract of letter of Acting Superintendent Stuart, both in Int. Ex. I-66, at p. 7.

41. Pursuant to the special provision incorporated in the treaty negotiated September 27, 1833, the United States made some payments to the Pokagon band. However, the band claimed that it had not received all the payments to which it was entitled. In 1866, an agreement was reached between the Pokagon band and the Potawatomi Nation, with the approval of the United States, whereby the claim of the Pokagon band was settled for the sum of $39,000. Payment of this sum was made to the band pursuant to the Joint Resolution of July 28, 1866, 14 Stat. 370.

EVIDENCE

See Def. Ex. 37 and Ex. 39.

42. In a subsequent memorial to Congress in 1874, signed by Simon Pokagon, as chairman of the band's business committee, the Pokagon band challenged the adequacy of the settlement, but expressly disclaimed any interest in treaties made with the United States subsequent to 1833. The memorial stated: "By the treaty dated September 27, 1833, these Indians became separate peoples, with distinct, separate rights, by the treaty." With reference to payments made to the Potawatomi Nation under the 1846 treaty, the memorial stated: "The eastern Indians had no right to participate in these funds, and now make no claim to."

EVIDENCE

See memorial, House Misc. Doc. 5, 43rd Cong., 2d Sess., Int. Ex. I-66, at pp. 4 and 6.

43. By the Act of March 19, 1890 (26 Stat. 24), jurisdiction was vested in the Court of Claims to determine the claims of the "Pottawatomie Indians of Michigan and

Indiana," or the group which has been referred to herein as the Pokagon band. The act provided that the payment referred to above in Finding 41, was not to constitute an estoppel.

Under this Act, two groups of Indians in Michigan filed petitions in the Court of Claims. One petition (Court of Claims No. 16743) alleged a claim to a pro rata payment under all treaties with Potawatomi bands, other than the Huron band, which provided for annuities extending beyond 1833. This included a claim to a pro rata share in a permanent annuity of $300, which the United States had agreed to pay under the 1846 treaty with the Potawatomi Nation, in lieu of certain goods and services provided for under a treaty made September 20, 1828.

The other petition (Court of Claims No. 16842) alleged the same claim, and in addition alleged a claim to a pro-rata share of the monies paid by the United States to the Potawatomi Nation for the lands in Iowa and Kansas ceded in 1846.

Neither of the petitions alleged a claim to any proportion of the permanent annuity payable to the Huron band.

EVIDENCE

Intervenors' Exhibits I-73 and I-74, being copies of petitions in Court of Claims cases Nos. 16743 and 16842, respectively, of which the Commission takes judicial notice.

44. The two petitions were consolidated for trial. The court found that the number of Indians authorized by the treaty of September 27, 1833, to receive shares of annuities in Michigan was 250. The court found that other Potawatomi Indians had remained in Michigan Territory who were not beneficiaries of the special provision of the treaty made September 27, 1833. The court was unable to identify the Indians who had rights under that provision.

The court allowed a recovery based upon its findings of the proportion the number of Indians authorized to remain in Michigan bore to the number of Indians who had removed west, making an average of the variations in population which occurred through the years during which payments were not made to the Pokagon band or were insufficient.

EVIDENCE

See Potawatomie Indians v. U. S., 27 C. Cls. 403.

45. The court's allowance was based on all the treaties made with the Potawatomi bands, other than the Huron band, through 1833. It did not include any part of the monies payable to the Potawatomi Nation under the 1846 treaty, but it did include in its allowance the proportionate share of the annual payment of $300 which by the 1846 treaty was to be made in lieu of the goods and services provided for under the treaty of September 20, 1828 (7 Stat. 317).

EVIDENCE

See 27 C. Cls. at p. 407.

46. The court held that the non-emigrating Indians who were not members of the Pokagon band had no rights. With respect to the Pokagon band the court declared:

> " . . . Under the terms of this supplement a portion severed its connection with the united nation, and thereby lost its identity with the Pottawatomies as a tribe, in order that it might avail itself of the privilege of remaining in the Territory of Michigan. In ceasing to be a part of the united nation, it did not retain any part of the political or corporate power of the tribe, that was undivided and still inherent in the body which emigrated beyond the Mississippi pursuant to the terms and requirements of the treaty. The portion remaining may have acquired a right to share in the annuities, but the corporate power of the tribe

remained intact and incident to the larger body which emigrated."

EVIDENCE

See 27 C. Cls. at p. 412.

47. The Pokagon band did not have any interest in the lands which have been identified as Royce Area 187 and which were ceded to the United States by the United Nation by the treaty of September 26, 1833.

EVIDENCE

See Findings 9, 11-14, 16-18, and evidence cited.

48. The Pokagon band never acquired any interest in the lands ceded by the Potawatomi Nation in 1846.

EVIDENCE

See Findings 40-47, and evidence cited.

49. A small minority of the members of the United Nation were unwilling to emigrate westward after the 1833 treaty, and instead moved northward, into northern Wisconsin, northern Michigan and Canada. Some of them went to live with the Menominee tribe in Wisconsin.

EVIDENCE

In 1837, it was reported by Schoolcraft that about 300 members of the United Nation, "disinclined to emigrate" had gone north (Def. Ex. 86). In 1842, it was reported that, as of 1840 a number remained who "manifested an unwillingness to emigrate at that time" (Int. Ex. I-31). These were "a remnant of the United Nation . . . about two hundred and fifty in number" (Int. Ex. I-29). Some of these Indians attempted to join the Menominee tribe in northern Wisconsin (Def. Ex. 96 and Int. Ex. I-36). In 1870, the Commissioner of Indian Affairs reported to the Secretary of the Interior, with reference to "stray bands" of Potawatomi in Wisconsin:

> "These bands are remnants of their tribes that were removed years ago to the west of the Mississippi River, and comprise those who avoided

the efforts of the government to remove them, or those who refused to accompany their tribe, and some who, after being removed, returned to their old home. It is understood they are averse to leaving Wisconsin; and it might perhaps be necessary to use force to accomplish their removal. . . ." [In House Ex. Doc. No. 216, 41st Cong., 2nd Sess., Int. Ex. I-67, at p. 2].

50. In accordance with Potawatomi customs, recognized and adhered to by the United States, Potawatomi Indians who voluntarily separated themselves from their band were considered to have given up their membership and their interest in the assets of the band.

EVIDENCE

Dr. Wallace testified as to customs of the Potawatomi during the period 1795-1846 with which he was dealing (Tr. 946-947, 951-952, 955-956).

Congress recognized this common practice when in the Act of June 25, 1864, 13 Stat. 161, 172, it referred to annuities to which stray bands of Potawatomi and Winnebagoes in Wisconsin "would be entitled if they were settled upon their reservations with their respective tribes . . ."

Persons who left the Prairie Band in Kansas and went to Wisconsin gave up their membership in that band and were denied the rights of members both by the Band and the Government. They were reinstated as members only by action of the Prairie Band Council. See, in Pet. (71-A) Ex. A-57), letters: Superintendent Williams to Commissioner, March 17, 1906, and Sept. 15, 1906; Acting Commissioner to Secretary, Nov. 15, 1906, and Jan. 8, 1907.

51. The appropriation act of June 25, 1864, 13 Stat. 161, contained the following provision:

" . . . to enable the Secretary of the Interior to take charge of certain stray bands of Winnebago and Pottawatomie Indians, now in the State of Wisconsin, with a view to prevent any further depredations by them upon the citizens of that state, and for provi-

sions and subsistence, ten thousand dollars: *Provided*, That the proportion of annuities to which said stray bands of Pottowatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them."

EVIDENCE

13 Stat. 161, 172.

52. No funds were retained in the Treasury earmarked to the credit of Indians of Potawatomi ancestry residing in Wisconsin.

EVIDENCE

See Int. Ex. I-85, at p. 3.

53. At various times subsequent to 1864 Congress continued to authorize payment to the Citizen Band and the Prairie Band of funds due to the Potawatomi Nation under various treaties including the 1833 and 1846 treaties. Pursuant to the 1861 treaty referred to above in Findinng 29, between the years 1870 and 1875 Congress authorized payment to the members of the Citizen Band, per capita, of that Band's pro rata share of the funds of the Potawatomi Nation held by the United States and of the capital value of the permanent annuities payable under the various treaties made originally with the four bands who were united to form the Potawatomi Nation in 1846.

Congress continued to appropriate for the Prairie Band its pro rata share of the permanent annuities until the annuities were capitalized and commuted as set out below in Finding 54. In addition, Congress continued to appropriate for the Prairie Band the interest on the capital

funds of the Potawatomi Nation retained in the Treasury for the Prairie Band after payment to the members of the Citizen Band of their pro rata share of such funds.

EVIDENCE

See evidence cited under Finding 29. See also, Int. Ex. I-85 at p. 4.

54. By the Act of April 30, 1908, 35 Stat. 70, 73, Congress authorized negotiations to be held with various Indian tribes for the commutation of their perpetual annuities due under treaties. Subsequently, negotiations were held with members of the Prairie Band whereby it was agreed that they be paid, per capita, the capital value of the annuities then being paid to the band.

By Act of April 4, 1910, 36 Stat. 269, 288-289, the sum of $187,058 was appropriated for payment to the members of the Prairie Band in accordance with that agreement.

EVIDENCE

See Pet. (71-A) Ex. A-49 to A-54 inclusive.

55. In 1902, Indians in Wisconsin claiming Potawatomi descent asserted a right to share in the annuities and funds of the Potawatomi Nation. This claim was rejected by the Commissioner of Indian Affairs. Some months later the Indians presented a memorial to Congress asserting rights under the various treaties with the Potawatomi bands and requesting relief. By the Act of June 21, 1906, 34 Stat. 380, the Secretary of Interior was directed to investigate the claims and to make an enrollment of the Indians.

EVIDENCE

See Int. Ex. I-79.

56. Acting under the 1906 statute the Secretary of the Interior caused to be enrolled 457 Indians in Wisconsin, each of whom claimed at least one ancestor, on either side, having Potawatomi blood, and who were not enrolled

with any tribe then receiving benefits from the United States. In addition, the Secretary caused to be enrolled 1,550 Indians in Canada, who claimed at least one ancestor with Potawatomi blood, regardless whether or not these Indians were enrolled with groups recognized by the Canadian Government. The ancestors of the Indians so enrolled included Menominee, Winnebago, Chippewa and Ottawa Indians.

The agent who prepared this roll for the Government, Walter M. Wooster, excluded those Indians whose Potawatomi ancestors resided in southern Wisconsin or Michigan. He also excluded Indians whose ancestors had removed west of the Mississippi.

EVIDENCE

Wooster explained in his report:

"In order to be enrolled a claimant was required to prove satisfactorily (1) that he or one of his ancestors was a member of the Wisconsin Pottawatomie tribe or band at the time of the making of the treaty of 1833, but did not move west of the Mississippi River, as required by that treaty, and consequently did not receive any of the benefits accruing thereunder; and (2) that neither he nor the ancestor through whom he claimed was or had been enrolled with any other tribe or band in the United States.

"A large number of applicants were examined who, by their own admissions, were clearly shown to be without Pottawatomie blood. They were refused enrollment and told why. In many cases where Wisconsin Pottawatomie descent was claimed a searching inquiry disclosed that their ancestors, while Pottawatomies, belonged in southern Wisconsin or to the Michigan branch known as Pokagon's band of Pottawatomies. They also were rejected." [House Doc. 830, 60th Cong., 1st Sess., at p. 14. Def. Ex. 41; Int. Ex. I-85]

The Indians enrolled in Canada included those receiving "full rights as Canadian Indians" and those

receiving no benefits from the Canadian Government (Id., pp. 17-21).

Wooster was instructed by the Commissioner of Indian Affairs to adopt the Churchill roll made the preceding year (Pet. (71-A) Ex. A-56). That roll had 414 names. Churchill reported that these Wisconsin Potawatomi were intermarried with Menominee, Winnebago, Chippewa and Ottawa (Churchill to Hitchcock, Nov. 10, 1906, part of Pet. (71-A) Ex. A-57).

Writing to one of the Indians on whom he was relying for help Wooster stated:

> "Of course, you are aware that no Indians or descendants of any Indian are desired where the ancestor came from southern Wisconsin or Michigan. Only those who are related to the band or tribe of Indians who participated in the treaty of 1833—to which you belong—are to be included." [Wooster to Wemigwans, Nov. 22, 1907, part of Pet. (71-A) Ex. A-57].

57. Commencing with the Act of June 30, 1913, 38 Stat. 77, Congress made a series of appropriations for the benefit of the Indians on the Wooster roll, who then resided in Wisconsin and Michigan. None of the funds appropriated were taken from the assets or funds of the Citizen Band or the Prairie Band.

EVIDENCE

See 38 Stat. 102; 39 Stat. 156; 39 Stat. 991; 40 Stat. 589; 41 Stat. 29; 41 Stat. 432; 45 Stat. 159.

58. The Hannahville and Forest County Communities which have intervened in this suit, comprise Wisconsin Indians enrolled as set forth in Finding 56, or descendants of Indians so enrolled.

EVIDENCE

These communities have not actually been identified by evidence in the record, but the intervenors' petition appears to relate the intervenors to the beneficiaries of the appropriations referred to in Finding 57.

EDGAR E. WITT
Chief Commissioner

LOUIS J. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner

APPENDIX [Commission]

Potawatomi Land Cession Treaties

ROYCE AREA

Date and citation	*Map*	*Nos.*	*Description of Potawatomi*
(Greenville) Aug. 3, 1795 7 Stat. 49	Ohio	11	Putawatames of the River Saint Joseph Putawatamees of Huron
July 4, 1805 7 Stat. 87 Archives No. 44	Ohio	53, 54	"such of the Pottawatima nation as reside on the river Huron of Lake Erie"
Nov. 17, 1807 7 Stat. 105	Ohio Michigan 1	66	"such of the Pottawatamies as now reside on the river Huron of lake Erie, the river Raisin, and in the vicinity of the said rivers"
Aug. 24, 1816 7 Stat. 146	Illinois 1	78	"united tribes of Ottawa, Chipawas, and Pottowotomees, residing on the Illinois and Melwakee rivers, and their waters, and on the southwestern parts of Lake Michigan"
Sept. 29, 1817 7 Stat. 160	Ohio Michigan 1	87, 88	Potawatomee tribe
Oct. 2, 1818 7 Stat. 185	Indiana Illinois 1	98	Potawatamie nation of Indians
Aug. 29, 1821 7 Stat. 218	Michigan 1 Indiana	117	Pottawatamie Nation
Oct. 16, 1826 7 Stat. 295	Indiana	132, 133	Potawatami tribe
Sept. 20, 1828 7 Stat. 317	Indiana Michigan 1	145, 146	Potawatomi tribe
July 29, 1829 7 Stat. 320	Illinois 2 Wisconsin 1	147, 148	"United Nations of Chippewa, Ottawa, and Pottawatamie Indians, of the waters of the Illinois, Milwaukee, and Manitoouck Rivers"
Oct. 20, 1832 7 Stat. 378	Illinois 1	177	Potawatamie Tribe of Indians of the Prairie and Kankakee
Oct. 26, 1832 7 Stat. 394	Indiana	180	Pottawatimie Indians
Oct. 27, 1832	Indiana	181	Potawatamies of the State of Indiana and Michigan Territory
Sept. 26, 1833 7 Stat. 431	Illinois 2 Wisconsin 1	187	"United Nation of Chippewa, Ottowa and Potawatamie Indians"

Note: The foregoing list is intended only to identify the various tracts ceded by Potawatomi bands to the United States. It does not include treaties later ceding reserves retained out of these tracts. For Potawatomi treaties not listed above, see Findings 12, 16 and 23.

EVIDENCE

These communities have not actually been identified by evidence in the record, but the intervenors' petition appears to relate the intervenors to the beneficiaries of the appropriations referred to in Finding 57.

EDGAR E. WITT
Chief Commissioner

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Sept. 29, 1817 7 Stat. 160	Ohio Michigan 1	87, 88	Potawatomee tribe
Oct. 2, 1818 7 Stat. 185	Indiana Illinois 1	98	Potawatamie nation of Indians
Aug. 29, 1821 7 Stat. 218	Michigan 1 Indiana	117	Pottawatamie Nation
Oct. 16, 1826 7 Stat. 295	Indiana	132, 133	Potawatamie tribe
Sept. 20, 1828 7 Stat. 317	Indiana Michigan 1	145, 146	Potawatomi tribe
July 29, 1829 7 Stat. 320	Illinois 2 Wisconsin 1	147, 148	"United Nations of Chippewa, Ottawa, and Pottawatamie Indians, of the waters of the Illinois, Milwaukee, and Manitoouck Rivers"
Oct. 20, 1832 7 Stat. 378	Illinois 1	177	Potawatamie Tribe of Indians of the Prairie and Kankakee
Oct. 26, 1832 7 Stat. 394	Indiana	180	Pottawatimie Indians
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IN THE

Supreme Court of the United States

October Term, 1958

Number 627

HANNAHVILLE INDIAN COMMUNITY, ET. AL.,
Petitioners.

VS.

THE PRAIRIE BAND OF POTAWATOMI INDIANS ET. AL.;
THE CITIZEN BAND OF POTAWATOMI INDIANS ET. AL.;
Respondents

and

UNITED STATES OF AMERICA.

REPLY OF PETITIONERS TO BRIEF OF RESPONDENTS

WALTER H. MALONEY.
JAMES N. BERRY
839 Investment Bldg.
Washington 5, D. C.
Attorneys for Petitioners.

PAUL M. NIEBELL
Of Counsel.

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

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IN THE

Supreme Court of the United States

October Term, 1958

Number 627

HANNAHVILLE INDIAN COMMUNITY, ET. AL.,
Petitioners.

vs.

THE PRAIRIE BAND OF POTAWATOMI INDIANS ET. AL.;
THE CITIZEN BAND OF POTAWATOMI INDIANS ET. AL.;
Respondents

and

UNITED STATES OF AMERICA.

REPLY OF PETITIONERS TO BRIEF OF RESPONDENTS

This reply of Petitioners is timely filed within the meaning of Section 24 (4) of the Rules of this Court.

The question here for this Court to settle is of general and public importance with respect to the plenary and constitutional right of Congress to legislate with respect to Indians, Indian Tribes and their property without interference by the Judiciary.

The question at issue is (as stated on page 5 of the petition and brief)—can the Court of Claims or the Indian Claims Commission by their own analysis, conclusions or inferences, "inquire into, question or modify" the action of Congress (Acts of 1864, 1906, 1913) in the

exercise of its plenary and constitutional power over Indian affairs?

Respondents have not discussed or even mentioned the question presented by the petition herein. Respondents have studiously avoided discussing the legal issue and the decisions of this Court cited (*infra*) in support of Petitioners' answer to this question. Therefore it is deemed admitted that Respondents have no answer to the question here involved.

Respondents resort to a discussion of issues and authorities that might be relevant if the plenary power of Congress were not here involved.

CONFLICT OF DECISIONS

Respondents state on page 6 of their brief:

> "Petitioners have offered no citations in support of their assertion that 'there is a conflict of decisions which this Court must settle'."

The attention of the Court is respectfully directed to pages 12 to 17 of Petitioner's brief, where Petitioners reassert that the decision of the Court of Claims and the Indian Claims Commission are in direct conflict with the decisions of this Court in *Lone Wolf* v. *Hitchcock*, 187 U. S. 544; *United States* v. *Holliday*, 70 U. S. 419; *United States* v. *Kagama*, 118 U. S. 375.

The decisions of this Court in the above cases require the Court of Claims and the Indian Claims Commission to follow what this Court did and said in the above cases.

ISSUE STATED IN THE AFFIRMATIVE

The United States Court of Claims or the Indian Claims Commission were without authority to modify, inquire into or question the action of Congress (Acts of 1864, 1906, 1913, supra) in settling the rights of Petitioners

to share in the tribal assets of the tribe to which they belonged. The Act of June 30, 1913 accorded to Petitioners what the Court of Claims is now denying them. Every issue of law and fact before the Indian Claims Commission and the Court of Claims was in 1913 before Congress and had been for many years. Congress, on three occasions, legislated with respect to those facts and the issue here (Acts of 1864, 1906, 1913). (Appx. main Brief, pp. 48A and 49A. Acts set out in full.).

On June 30, 1913 (Appx. 49A) Congress settled this issue and established the rights of Petitioners by *paying* the Indians (Petitioners and their ancestors) $447,339 as *"their proportionate share of said Indians in annuities and moneys of the Potawatomi Tribe in which they have not shared."* (Emphasis ours.) That payment as their "share" of the tribal property was an accomplished fact that definitely fixed the interest and right of Petitioners. The Court of Claims and the Indian Claims Commission may not disturb that action of Congress.

The explanations, the illogical reasons given by the Court of Claims and the Commission in voiding those Acts of Congress as indicative of what the Court or the Commission may do to destroy the power of Congress over Indian affairs if this Court does not review what the Court of Claims and the Indian Claims Commission have done herein.

Every case cited by Respondents in their briefs finds its origin in a jurisdictional Act of Congress authorizing the action of the Court. On the contrary, in the instant case, Congress *itself* decided the issue. This important distinction is not discussed by Respondents, the Court of Claims nor the Indian Claims Commission.

GOVERNMENT'S POSITION

Of this issue and situation, the United States Government, Defendant herein, although having no interest in

the dispute between Petitioners and Respondents, joined Petitioners before the Indian Claims Commission and stated (Brief of Gov. before Indian Claims Commission opposing motion to dismiss, page 45) (copy in Record):

> "The authority and power to recognize the rights of the ancestors and predecessors (Petitioners) . . . , being in Congress supreme, and having been heretofore exercised by that legislative body, the courts are powerless to ignore, or strike down such recognition, but are required to follow such Congressional action."

The Government (main Brief p. 252) after reviewing the facts before Congress at the time (1864, 1906, 1913) further states:

> "For many years subsequent to 1833, the United States saw fit to withhold the payment of all Potawatomi annuities, assets and funds to the Potawatomi Indians who failed to comply with the removal provisions of the 1833 Treaty. However, in 1908, the Government relented in this respect (this was after the Supreme Court struck down claims of forfeiture against non-emigrant Indians, *New York Indians* v. *United States*, 170 U. S. 25-26), and Congress has since corrected this situation by fully recognizing the members of the Wisconsin band of Potawatomi Indians as full fledged members of the Potawatomi Tribe, and entitled as such to share fully on a pro rata basis in all tribal annuities, assets and funds accruing to the tribe subsequent to 1833, including specifically the proceeds arising from the sale of the ceded lands. As there were no Potawatomi tribal funds then available, Congress from time ot time has appropriated public funds for that purpose[. . . ."

The Government's appeal brief before the Indian Claims Commission, page 44, contains statement to the same effect and cites the *Lone Wolf* case and other cases cited above.

If Acts of Congress that deal with Indian affairs can be subjected to theoretical, superficial or personal opin-

ions, the constitutional and plenary power of Congress will be surrendered to the Courts and the plenary power of Congress over Indian affairs will come to an end.

CONCLUSION

A Writ of Certiorari should be granted herein to settle this issue and prevent the establishment of a precedent that will encroach upon the security of Congress in dealing with Indians and Indian property and to correct the errors of the Indian Claims Commission and the Court of Claims with respect to the power of Congress over Indian Affairs.

Respectfully submitted,

WALTER H. MALONEY
JAMES N. BEERY
Attorneys for Petitioners
839 Investment Building,
Washington 5, D. C.

PAUL M. NIEBELL
Of Counsel.